

1  
2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 In re: JDS UNIPHASE CORPORATION  
11 SECURITIES LITIGATION

No. C-02-1486 CW (EDL)

**ORDER GRANTING MOTION TO  
COMPEL**

12  
13 This document relates to ALL ACTIONS  
14

15 On April 4, 2007, JDSU filed a motion to compel production of notes that show a  
16 fundamental analysis performed by Lead Plaintiff's expert, Scott Hakala, while drafting his report.  
17 JDSU also sought a sworn statement regarding any destruction of notes containing that analysis.  
18 Lead Plaintiff opposed this motion and JDSU filed a reply. Because this matter is appropriate for  
19 decision without oral argument, the May 15, 2007 hearing was vacated.

20 Mr. Hakala stated at his deposition that he used a fundamental analysis, or a snapshot  
21 approach, in a "heuristic" manner to give him confidence in his primary inflation analysis. See  
22 Declaration of Kevin Calia Ex. G at 193:12-21; 190:13-191:1; 190:17-20; Ex. H at 407:2-4; 410:23-  
23 411:3. JDSU argues that Mr. Hakala's fundamental analysis notes are discoverable because they  
24 constitute "data or other information considered by the witness in forming the opinions." Fed. R.  
25 Civ. P. 26(a)(2)(B). Lead Plaintiff primarily argues that the parties' stipulation regarding expert  
26 discovery precludes production of Mr. Hakala's notes. Declaration of Anthony Harwood Ex. 1 at ¶  
27 2 ("The parties shall not be required to preserve or produce draft expert reports or any notes or  
28 communications related thereto, including draft studies and draft work papers, unless the expert is  
relying upon facts or data contained in any such documents in forming an opinion in this matter and

1 those facts or data are not otherwise produced.”).

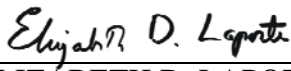
2 Mr. Hakala’s deposition testimony reveals that he relied on the fundamental analysis in  
3 checking the reasonableness of, and in reaching, his final opinion. Therefore, his notes, to the extent  
4 that any exist, are discoverable pursuant to Rule 26(a)(2)(B) and do not fall within paragraph two of  
5 the parties’ stipulation. Therefore, JDSU’s motion to compel is granted. Lead Plaintiff shall  
6 produce Mr. Hakala’s notes containing his fundamental analysis no later than May 25, 2007.

7 Mr. Hakala has already submitted a declaration stating that he “never recorded many of the  
8 estimates and took no notes relating to most of the calculations.” Declaration of Scott Hakala ¶ 2.  
9 He further stated that he did not destroy any of the notes that he did make. Id. The Court can see  
10 no reason to require a further declaration about any destruction of Mr. Hakala’s notes.

11 JDSU has not sought sanctions relating to this issue, and the Court would discourage it from  
12 doing so. Lead Plaintiff made a colorable argument that the notes were not discoverable pursuant to  
13 the parties’ stipulation, and they do not appear to be of central relevance. Moreover, the Court does  
14 not conclude that there was any improper behavior by Lead Plaintiff.

15 IT IS SO ORDERED.

16 Dated: May 11, 2007

  
\_\_\_\_\_  
ELIZABETH D. LAPORTE  
United States Magistrate Judge